

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.E
Mtg. Date May 19, 2015
Dept. Public Works

Item Title: On-Call Restoration Services Agreements

Staff Contact: Mike James, Public Works Director

Recommendation:

Adopt a resolution (**Attachment B**) approving professional services agreements (**Attachment B – Exhibit 1 and 2**) with Restoration Management Company and 911 Restoration of San Diego for on-call restoration services in the City of Lemon Grove. |

Item Summary:

In order to adequately manage emergencies that arrive involving the City's infrastructure, professional restoration management companies are recommended to be pre-screened and on-call. Staff proposes entering into agreements for on-call restoration services with two companies: Restoration Management Company and 911 Restoration of San Diego.

The staff report (**Attachment A**) details the procurement process, qualifications, and special services provided by both companies. |

Fiscal Impact:

The amount currently allocated for restoration services in the FY 2015-2016 General Fund and Sanitation District budgets are \$10,000 and \$20,000, respectively; no additional funding is requested at this time. |

Environmental Review:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Not subject to review
<input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Negative Declaration
<input type="checkbox"/> Mitigated Negative Declaration |
|--|--|

Public Information:

- | | |
|--|---|
| <input checked="" type="checkbox"/> None
<input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Newsletter article
<input type="checkbox"/> Notice to property owners within 300 ft.
<input type="checkbox"/> Neighborhood meeting |
|--|---|

Attachments:

- A. Staff Report
- B. Resolution

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.E

Mtg. Date May 19, 2015

Item Title: On-Call Restoration Services Agreement

Staff Contact: Mike James, Public Works Director

Background:

The City of Lemon Grove maintains over 74,000 square feet of facilities, 67 miles of sewer main lines, and one lift station in the City. In most instances, when an emergency occurs that requires restoration services (e.g. sewer overflow or a water leak in a City-owned building) the City mitigates the problem by declaring an emergency per the City's purchase policy and calls a local company for repairs. Rather than relying on the nearest company that may or may not have the most applicable experience to respond, staff recommends establishing a pre-qualified list of companies that have the knowledge, skills and abilities to address each emergency as it arises. An on-call restoration services program should include:

- 24 hours, 7 days a week response capabilities,
- Professionally trained staff,
- Ability to prepare timely and accurate reports,
- Local office in San Diego County, and
- A single point of contact for all calls for service.

The primary purpose of establishing an on-call list is to pre-qualify companies to perform a series of activities. This will minimize response times, establish cost estimates in advance of events occurring, and minimize paperwork to be completed when an unforeseen event occurs.

Historically, the City has not created an on-call restoration services list but rather relied on City staff and various restoration contractors to perform emergency spill mitigation activities as they occurred throughout the City. During Fiscal Year 2014-2015, funds were allocated to manage restoration services as needed within City maintained areas from the Sanitation District (\$20,000) and the City's Facilities Division (\$10,000). During this period, no funds were expended by the Sanitation District or the City for said services.

The remaining portion of this staff report details the procurement process and qualifications provided by each contractor.

Discussion:

On October 20, 2014, the City advertised a request for qualifications (RFQ) for professional restoration services firms in order to establish an on-call list. The City advertised the RFQ through the eBidboard and through the City's website. Two companies responded to the RFQ with statements Restoration Management Company (RMC) and 911 Restoration of San Diego (911 Restoration). The scope of work included projects like fire & smoke damage restoration, environmental services, and specialty services such as complete content restoration and electronic restoration.

Attachment A

Staff evaluated both statements, performed reference checks, and concluded that both RMC and 911 Restoration met the requirements stated in the RFQ.

Qualifications and Special Services of RMC

RMC has been in business since 1985. It currently has 11 offices located throughout the State of California, with a local office in San Diego. It employees 275 employees that specialize in the following areas:

- Fire & Smoke Damage Restoration
 - Corrosion Control
 - Equipment Protection
 - Structural Cleaning
 - HVAC Cleaning
 - Odor & Soot Removal
- Water Damage Restoration
 - Water Removal
 - Structural Drying
 - Desiccant Dehumidification
 - Thermal Imaging Analysis
- Specialty Services
 - Complete Content Restoration
 - Electronic Restoration
 - Vital Document Recovery
 - Secure Site Services
- Abatement
 - Asbestos/lead removal
 - Mold Removal
 - Controlled Demolition
- Climate Control
 - Temporary Power
 - Temporary HVAC

In San Diego County, RMC has recently worked with the cities of San Diego, National City, La Mesa, and the Grossmont Unified School District. RMC has worked with the City of Lemon Grove to mitigate a sewer line pipe collapse at the Senior Center. RMC has numerous certifications and affiliations with professional associations that staff believes qualify it to manage any type of restoration need that the City may encounter.

Qualifications and Special Services of 911 Restoration

911 Restoration was established in 2007. It is a complete restoration company specializing in professional cleanup and repair from water, smoke and mold damage. Currently employing 10 staff members, 911 Restoration is a Federal and State certified small business that is based out of San Diego. Services provided by 911 Restoration include:

- Water Extraction and Structure Drying,

Attachment A

- Mold Remediation,
- Smoke and Fire Damage,
- Board Up Services,
- Odor Control,
- Air Duct Cleaning, and
- Restoration and Reconstruction to Pre-Loss Condition.

911 Restoration has recently worked for the following government and commercial entities: National Training Center Fort Irwin, United States Department of Veteran Affairs - Los Angeles Hospital, United State Coast Guard Base Alameda, Fashion Valley Mall, and Best Buy. 911 Restoration has certifications and affiliations with professional associations that staff believes qualify it to manage any type of restoration need that the City may encounter.

Key Points of the Agreement

The proposed contract will allow the City to receive:

- A three year agreement with established costs for services,
- 24/7 availability for emergency call outs, and
- Free consulting services regarding restoration activities or questions that City staff may have.

Conclusion:

Staff recommends that the City Council adopt a resolution (**Attachment B**) approving agreements (**Attachment B – Exhibit 1 and 2**) with Restoration Management Company and 911 Restoration for on-call restoration services in the City of Lemon Grove.

Attachment B

RESOLUTION NO. 2015 - _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA
APPROVING AGREEMENTS WITH RESTORATION MANAGEMENT COMPANY AND 911
RESTORATION OF SAN DIEGO FOR ON-CALL RESTORATION SERVICES
IN THE CITY OF LEMON GROVE**

WHEREAS, the City maintains over 74,000 square feet of facilities, 67 miles of sewer main lines, and one lift station; and

WHEREAS, the City has not formally adopted an on-call restoration services program but rather relied on City staff and professional contractors to perform as needed restoration services; and

WHEREAS, an on-call restoration services response program is essential for ensuring a timely, safe and professional response to any emergency or routine restoration call for service; and

WHEREAS, Restoration Management Company and 911 Restoration of San Diego have agreed to the professional agreement terms as presented in (**Exhibit 1 and 2**); and

WHEREAS, staff believes that both Restoration Management Company and 911 Restoration of San Diego provide special services and maintain a professional training standard that can manage any restoration service need required by the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves an agreement (**Exhibit 1**) with Restoration Management Company for on-call restoration services in the City of Lemon Grove; and
2. Approves an agreement (**Exhibit 2**) with 911 Restoration of San Diego for on-call restoration services in the City of Lemon Grove; and
3. Authorizes the City Manager or designee to execute and manage all contractual documents. |

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Attachment B – Exhibit 1

AGREEMENT BY AND BETWEEN THE CITY OF LEMON GROVE AND RESTORATION MANAGEMENT COMPANY

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the “CITY”), and RESTORATION MANAGEMENT COMPANY, a professional restoration company (the “CONTRACTOR”).

RECITALS

WHEREAS, the CITY desires to employ a CONTRACTOR to provide on-call restoration management services.

WHEREAS, the CITY has determined that the CONTRACTOR is qualified by experience and ability to perform the services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **SCOPE OF SERVICES.** The CONTRACTOR will perform routine and emergency mitigation and restoration services as needed.

The CONTRACTOR shall be responsible for all work related to this agreement and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONTRACTOR shall appear at meetings as needed to keep staff advised of the progress on any project.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services. In accordance with the City’s Purchase Policy, no single project will exceed \$30,000 without prior authorization from the City Council.

3. **PROJECT COORDINATION AND SUPERVISION.** The Community Services Superintendent and Public Works Superintendent are hereby designated as Project Coordinators for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single Project Director to provide supervision and have overall

Attachment B – Exhibit 1

responsibility for the progress and execution of this Agreement for the CONTRACTOR. _____ thereby is designated as the Project Director for the CONTRACTOR.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described on pages 9-12 shall not exceed thirty thousand dollars and zero cents (\$30,000.00) (the Base amount) without prior written authorization from the City Council. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with the scope of work as determined by and in the sole discretion of the CITY.

The CONTRACTOR shall maintain all documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** This agreement will expire on June 30, 2018. If a project runs past the expiration date, the work will continue until all work has been completed by the CONTRACTOR and accepted by the CITY.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's written work product for the CITY's purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Attachment B – Exhibit 1

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession.

11. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in

Attachment B – Exhibit 1

similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

12. NON-DISCRIMINATION PROVISIONS. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

13. CONFIDENTIAL INFORMATION. The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Attachment B – Exhibit 1

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONTRACTOR's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONTRACTOR's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONTRACTOR expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **WORKERS' COMPENSATION.** The CONTRACTOR shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement.

16. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☐ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONTRACTOR's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds.

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G. If required insurance coverage is provided on a “claims made” rather than “occurrence” form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A VIII according to the current Best’s Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys’ fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney’s fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney’s fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney’s fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney’s fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the “AAA”). The costs of mediation shall be borne equally by the parties.

19. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 30-day’s written notice to the CONTRACTOR. During said 30-day period the CONTRACTOR shall perform all services in accordance with this Agreement. The Contractor may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the City of its obligations under this Agreement including but not limited to payment of invoices.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the City’s satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work

Attachment B – Exhibit 1

satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: City of Lemon Grove
 Public Works Department
 3232 Main Street
 Lemon Grove, CA 91945-1701

To the CONTRACTOR: Restoration Management Company
 8340 Camino Santa Fe. Unit A
 San Diego, CA 92121

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

21. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interest's conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

Attachment B – Exhibit 1

☐ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONTRACTOR shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

22. MISCELLANEOUS PROVISIONS.

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and

Attachment B – Exhibit 1

the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

officers)

By: _____

Graham Mitchell

City Manager

(Title)

(Date)

RESTORATION MANAGEMENT COMPANY

(Corporation – signatures of two corporate

Partnership – one signature)

(Sole proprietorship – one signature)

By: _____

(Name)

(Title)

(Date)

(Name)

(Title)

(Date)

APPROVED AS TO FORM:

By: _____

James Lough

City Attorney

(Title)

(Date)

By: _____

(Name)

(Title)

(Date)

Attachment B – Exhibit 1



Schedule of Fees - 2014

Labor Rates:	Unit	Price
Senior Project Manager	Per Hour	\$105.00
Project Manager	Per Hour	\$85.00
Operations Manager	Per Hour	\$75.00
Technical Cleaning Specialist	Per Hour	\$70.00
Environmental Supervisor	Per Hour	\$68.00
Environmental Technician	Per Hour	\$60.00
Desiccant Technician	Per Hour	\$62.00
HVAC Supervisor	Per Hour	\$63.00
HVAC Technician	Per Hour	\$55.00
Restoration Supervisor	Per Hour	\$60.49
Restoration Technician	Per Hour	\$56.02
Administrative	Per Hour	\$42.56
Cleaning Technician	Per Hour	\$42.56
General Labor	Per Hour	\$33.00
Management of Customer Labor Force - per hour/per person	Per Hour	\$3.00 to \$5.00

Note:

Labor calculations are based on an 8 hour workday, Monday through Friday. All hours worked beyond 8 hours Monday through Friday will be considered overtime. Overtime hours will be calculated at 1.5 times the regular rate. All hours worked on Saturday will be considered overtime for the first 8 hours and double time thereafter. Sunday and holidays will be calculated at 2 times the regular rate per schedule.

Labor charges include travel time (portal to portal)

Mobilization and Demobilization fees TBD based on location

Travel, lodging and per diem will be charged at cost plus 10% profit and 10% overhead

Subcontractors and equipment which is rented from others will be billed at cost plus 10% profit and 10% overhead

Storage Rates:	Unit	Price
Storage Vault	Per Day	\$3.83
Storage Vault	Per Month	\$115.00

Cartage and Disposal Service:	Unit	Price
Misc. Construction Debris	Per Job	OPEN
Disposal	Min. Charge	\$25.00

This Schedule of Fees is subject to change without notice. For customers under an annual agreement, thirty (30) days written notice will be provided.

Attachment B – Exhibit 1



Equipment List

Item	UOM	Price
AC - 1 Ton	DA	\$ 125.00
Air Mover - 2000 CFM	DA	\$ 27.50
Airless Sprayer	DA	\$ 45.00
Airwolf (Hardwood floor drying system)	DA	\$ 95.00
Axial Air Mover	DA	\$ 32.50
Blower, Industrial - 4000 CFM	DA	\$ 300.00
Cart, High Tech	DA	\$ 12.50
Cart, Debris	DA	\$ 40.00
Compressor	DA	\$ 38.55
Dehumidifier - Large (1200 / Evo / R175)	DA	\$ 85.00
Dehumidifier - Ex Large (2000 / 2400 / R200)	DA	\$ 125.00
Dehumidifier - Desiccant 150	DA	\$ 125.00
Dehumidifier - Desiccant 600	DA	\$ 375.00
Dehumidifier - Desiccant 2000	DA	\$ 950.00
Dehumidifier - Desiccant 5000	DA	\$ 1,550.00
Dolly - Appliance	DA	\$ 9.00
Dragon - Indirect Heat	DA	\$ 174.53
Drill - Cordless / Electric	DA	\$ 12.00
Dry Ice Machine	DA	\$ 485.00
Electrical - Cord	DA	\$ 3.00
Electrical - Light String - 100'	DA	\$ 10.00
Electronic Oven (Large)	DA	\$ 325.00
Extraction unit - Portable	DA	\$ 150.00
Extraction unit - Truck Mount	DA	\$ 540.00
Extreme Extractor	DA	\$ 185.00
Fan - 36 Inch	DA	\$ 42.00
Flex Duct 8"-12" X 25'	DA	\$ 35.00
Flex Duct 14"-20" X 25'	DA	\$ 62.00
Fogger - Wet	DA	\$ 15.00
Generator - Portable	DA	\$ 79.00
Generator 56KW	DA	\$ 386.00
Halogen Work Light	DA	\$ 6.00
Halogen Work Light - Dbl	DA	\$ 20.00
Hand Grinder	DA	\$ 12.50
Heater 60 KW	DA	\$ 375.00
HVAC Collector - 5000	DA	\$ 225.00
Hydroxyl Generator - 3 optic	DA	\$ 230.05
Injecti-Dry / Dry Force	DA	\$ 140.00
Ladder - A Frame	DA	\$ 6.00
Ladder - Extension	DA	\$ 10.00
Manometer	DA	\$ 20.00
Negative Air / Air Scrubber - 2000	DA	\$ 125.00
Negative Air / Air Scrubber - 500	DA	\$ 72.50
Ozone Generator	DA	\$ 150.00

Item	UOM	Price
Radio - 2 way	DA	\$ 6.00
Pallet Jack	DA	\$ 20.00
Power Cable - 50'	DA	\$ 13.00
Power Cable - Tail	DA	\$ 4.00
Power Distribution Box	DA	\$ 28.00
Pressure Washer	DA	\$ 130.00
Pressurized Steam Cleaner	DA	\$ 375.00
Pump Sprayer	DA	\$ 5.00
Sander - 4 1/2" w/HEPA attachment	DA	\$ 6.00
Saw - Circular (Skilsaw)	DA	\$ 12.50
Saw - Reciprocating (Sawzall)	DA	\$ 15.00
Saw - Specialty Drywall (Kett)	DA	\$ 32.00
Soda Blasting Machine	DA	\$ 485.00
Submersible Pump 2"	DA	\$ 181.42
Submersible Pump 3/4"	DA	\$ 35.00
Terminator (Floor Stripper)	DA	\$ 250.00
Thermal Fogger	DA	\$ 100.00
Thermal Imaging Camera	DA	\$ 225.00
Tool Box	DA	\$ 15.00
Tool Box - High Tech	DA	\$ 55.00
Turbo Vent (48")	DA	\$ 10.00
Turbo Vent (Mini)	DA	\$ 80.00
Ultra Sonic	DA	\$ 350.00
Unger Pole 18-24ft	DA	\$ 12.50
Unger Pole 8-12ft	DA	\$ 9.50
Vacuum, HEPA	DA	\$ 42.50
Vacuum, Shop Vac	DA	\$ 20.00
Vacuum, Upright	DA	\$ 9.00
Water Collector	DA	\$ 3.50
Zip Walls	DA	\$ 12.00
Vehicles	Unit	Price
Dump Truck	DA	\$ 250.00
Forklift - 8000 lb	DA	\$ 225.00
Moving Truck (16')	DA	\$ 160.00
Moving Truck (24')	DA	\$ 245.00
Passenger Van	DA	\$ 160.00
Service Van	DA	\$ 75.00
Tractor (Semi)	DA	\$ 325.00
Trailer (14')	DA	\$ 30.00
Trailer (Flatbed)	DA	\$ 355.00
Trailer (53' Restoration)	DA	\$ 525.00
Utility Vehicle (F150/250 - E150/250)	DA	\$ 85.00
Water Damage Unit (14' Box Truck)	DA	\$ 95.00

Attachment B – Exhibit 2

**AGREEMENT
BY AND BETWEEN
THE CITY OF LEMON GROVE
AND
911 RESTORATION OF SAN DIEGO**

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the “CITY”), and 911 RESTORATION OF SAN DIEGO, a professional restoration company (the “CONTRACTOR”).

R E C I T A L S

WHEREAS, the CITY desires to employ a CONTRACTOR to provide on-call restoration management services.

WHEREAS, the CITY has determined that the CONTRACTOR is qualified by experience and ability to perform the services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

23. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

24. **SCOPE OF SERVICES.** The CONTRACTOR will perform routine and emergency mitigation and restoration services as needed.

The CONTRACTOR shall be responsible for all work related to this agreement and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONTRACTOR shall appear at meetings as needed to keep staff advised of the progress on any project.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services. In accordance with the City’s Purchase Policy, no single project will exceed \$30,000 without prior authorization from the City Council.

Attachment B – Exhibit 2

25. **PROJECT COORDINATION AND SUPERVISION.** The Community Services Superintendent and Public Works Superintendent are hereby designated as Project Coordinators for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONTRACTOR. _____ thereby is designated as the Project Director for the CONTRACTOR.

26. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described on pages 9-12 shall not exceed thirty thousand dollars and zero cents (\$30,000.00) (the Base amount) without prior written authorization from the City Council. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with the scope of work as determined by and in the sole discretion of the CITY.

The CONTRACTOR shall maintain all documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

27. **LENGTH OF AGREEMENT.** This agreement will expire on June 30, 2018. If a project runs past the expiration date, the work will continue until all work has been completed by the CONTRACTOR and accepted by the CITY.

28. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

Attachment B – Exhibit 2

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's written work product for the CITY's purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

29. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

30. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

31. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

32. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any

Attachment B – Exhibit 2

license, permit, or approval which is legally required for the CONTRACTOR to practice its profession.

33. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

34. **NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

35. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the

Attachment B – Exhibit 2

CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

36. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONTRACTOR's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONTRACTOR's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONTRACTOR expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

37. **WORKERS' COMPENSATION.** The CONTRACTOR shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement.

38. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☐ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

Attachment B – Exhibit 2

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONTRACTOR's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

39. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney's fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney's fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney's fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

40. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

Attachment B – Exhibit 2

41. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 30-day's written notice to the CONTRACTOR. During said 30-day period the CONTRACTOR shall perform all services in accordance with this Agreement. The Contractor may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the City of its obligations under this Agreement including but not limited to payment of invoices.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the City's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

42. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: City of Lemon Grove
Public Works Department
3232 Main Street
Lemon Grove, CA 91945-1701

To the CONTRACTOR: 911 Restoration of San Diego
4174 Sorrento Valley Boulevard, Suite H
San Diego, CA 92121

Attachment B – Exhibit 2

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

43. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interest's conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☐ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONTRACTOR shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

44. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

Attachment B – Exhibit 2

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

Attachment B – Exhibit 2

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

911 RESTORATION OF SAN DIEGO
(Corporation – signatures of two corporate officers)
(Partnership – one signature)
(Sole proprietorship – one signature)

By: _____
Graham Mitchell

City Manager
(Title)

(Date)

By: _____
(Name)

(Title)

(Date)

(Name)

(Title)

(Date)

APPROVED AS TO FORM:

By: _____
James Lough

City Attorney
(Title)

(Date)

By: _____
(Name)

(Title)

(Date)

Attachment B – Exhibit 2



911 Restoration

4174 Sorrento Valley Blvd. Suite H
San Diego, CA 92121
Office 858-625-0003
Fax 858-625-0004
License # 955773

CONTINUED - Equipment Costs

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	TOTAL
Air mover (per 24 hour period) - No monitoring	1.00 EA	0.00	26.63	0.00	26.63
Dehumidifier (per 24 hour period) - No monitoring	1.00 EA	0.00	60.95	0.00	60.95
Dehumidifier (per 24 hour period) - Large - No monitoring	1.00 EA	0.00	79.52	0.00	79.52
Dehumidifier (per 24 hour period) - XLarge - No monitoring	1.00 EA	0.00	101.29	0.00	101.29
Negative air fan/Air scrubber (24 hr period) - No monit.	1.00 DA	0.00	74.56	0.00	74.56
Neg. air fan/Air scrub.-Large (per 24 hr period)-No monit.	1.00 DA	0.00	124.54	0.00	124.54
Neg. air fan/Air scrub.-XLrg (per 24 hr period)-No monit.	1.00 DA	0.00	140.00	0.00	140.00
Heat drying - thermal air exchanger	1.00 DA	0.00	325.00	0.00	325.00
HEPA Vacuuming - Light - (PER SF)	1.00 SF	0.00	0.35	0.00	0.35
Water extraction from carpeted floor	1.00 SF	0.00	0.59	0.00	0.59
Totals: Equipment Costs				0.00	933.43

Supply Costs

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	TOTAL
Protect - Cover with plastic	1.00 SF	0.00	0.30	0.01	0.31
Protect - Cover with plastic - after hours	1.00 SF	0.00	0.39	0.01	0.40
Apply anti-microbial agent	1.00 SF	0.00	0.24	0.00	0.24
Apply anti-microbial agent - after hours	1.00 SF	0.00	0.36	0.00	0.36
Add for personal protective equipment (hazardous cleanup)	1.00 EA	0.00	7.87	0.61	8.48
Totals: Supply Costs				0.63	9.79
Line Item Totals: PRICE_LIST				0.63	2,115.14

Attachment B – Exhibit 2



911 Restoration

4174 Sorrento Valley Blvd. Suite H
San Diego, CA 92121
Office 858-625-0003
Fax 858-625-0004
License # 955773

PRICE_LIST

Cost Per Employee

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	TOTAL
Hazardous Waste/Mold Cleaning Technician - per hour	1.00 HR	0.00	86.97	0.00	86.97
Emergency service call - during business hours	1.00 EA	0.00	166.05	0.00	166.05
Emergency service call - after business hours	1.00 EA	0.00	250.18	0.00	250.18
Water Extraction & Remediation Technician - per hour	1.00 HR	0.00	59.31	0.00	59.31
Water Extraction & Remediation Technician - after hours	1.00 HR	0.00	89.05	0.00	89.05
Equipment setup, take down, and monitoring (hourly charge)	1.00 HR	0.00	59.31	0.00	59.31
Equip. setup, take down & monitoring - after hrs	1.00 HR	0.00	89.05	0.00	89.05
Totals: Cost Per Employee				0.00	799.92

Storage Costs

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	TOTAL
Off-site storage & insur. - climate controlled - per month	1.00 SF	0.00	1.41	0.00	1.41
Totals: Storage Costs				0.00	1.41

Disposal Costs

DESCRIPTION	QTY	REMOVE	REPLACE	TAX	TOTAL
Haul debris - per pickup truck load - including dump fees	1.00 EA	123.90	0.00	0.00	123.90
Single axle dump truck - per load - including dump fees	1.00 EA	246.69	0.00	0.00	246.69
Totals: Disposal Costs				0.00	370.59

Equipment Costs